UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

CIVIL NO. 3:04cr157

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	ORDER
vs.)	
)	
ANDRE McRAE,)	
)	
Defendant.)	

THIS MATTER is before the Court on Defendant's Notice of Denial of Government's Notice of Intent to Seek Enhanced Penalties Pursuant to 21 U.S.C. § 851(a), requesting the Court to set a hearing as to Defendant's denial of the allegations contained in the Section 851 Notice.

Under section 851, the United States, in order to seek an enhanced sentence of a defendant, may at its discretion file an "information" establishing prior controlled substances convictions of the defendant. 21 U.S.C. § 851(a)(1). A defendant may deny the convictions or allege that the convictions were invalid. <u>Id.</u> § 851(c)(1). However, such a denial or allegation of must be in a "written response" and either specifically "raise" issues explaining why the defendant denies the convictions or provide a "factual basis therfor [sic], with particularity in [defendant's] response to the information." <u>Id.</u> § 851(c)(1) & (2).

Although the Court appreciates Defendant's filing of its Notice of Denial in advance of an anticipated subsequent filing of its required "written response," the Court holds that Defendant has failed to make the necessary showing under section 851(c)(1) & (2) requiring specific and particularized objections to the information.

THEREFORE, the Court declines to set a hearing time and date until Defendant has filed the required "written response" and made the necessary showing justifying a hearing.

Signed: April 3, 2007

Frank D. Whitney

United States District Judge